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No. 81-2169

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

GILBERT A. HARING, Lieutenant,
Arlington County Police Department, et al.,

Petitioners,

vs.

JOHN FRANKLIN PROSISE,

Respondent.

On Writ Of Certiorari to the United States
Court of Appeals for the Fourth Circuit

REPLY BRIEF TO THE BRIEF FOR RESPONDENT

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QUESTIONS PRESENTED

Can a person who has pleaded guilty in a state criminal court to manufacturing illegal drugs, and who did not raise the validity of the search that produced the essential evidence of the crime, subsequently bring an action in a federal court under 42 U.S.C. § 1983 claiming that the search was unconstitutional?

a. By pleading guilty in a state criminal court, does a person waive any right to litigate in a § 1983 action the constitutionality of the search which produced the essential evidence of the crime?

b. Does a conviction based upon a plea of guilty collaterally estop the later litigation in a federal court § 1983 action of the search and seizure claim, where the state court expressly found a sufficient factual basis for the plea and that basis was the evidence produced by the search?

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REPLY BRIEF TO THE BRIEF FOR RESPONDENT

I. RESPONDENT'S BRIEF PERPETUATES THE COURT OF APPEALS' ERROR BY ARGUING THAT, IN VIRGINIA, A FLAT RULE OF NONPRECLUSION ALWAYS PERMITS PERSONS WHO PLEAD GUILTY TO SUE POLICE OFFICERS FOR MONEY DAMAGES.

Respondent argues that "Virginia gives no preclusive effect to criminal convictions whether obtained by plea or by trial." (Respondent's Brief, p. 8). This argument perpetuates the error of the Court of Appeals for the Fourth Circuit. In

effect, the Court of Appeals held that, in Virginia, a flat rule of nonpreclusion always permits persons to sue police officers pursuant to 42 U.S.C. § 1983, notwithstanding a claimant's guilty plea. See *Prosise v. Haring*, 667 F.2d 1133, 1142 (4th Cir. 1981) (28 U.S.C. § 1738 requires Virginia law to be followed).

Contrary to the briefs filed for and on behalf of Respondent, the pleas of estoppel and res judicata, although otherwise used sparingly, have been applied in Virginia in order to preclude civil actions brought by pesons who sue law enforcement officers after pleading guilty. *Souders v. Gabrielson* (Va. S.Ct. 1975 Record No. 741124) demonstrates that the mutuality of estoppel doctrine, sometimes invoked in Virginia, does not defeat a police officer's plea of preclusion when the plaintiff in a civil suit had previously pleaded guilty in a criminal proceeding. Indeed, in *Souders v. Gabrielson*, the Virginia Supreme Court affirmed the judgment of the Circuit Court which sustained the plea of estoppel and res judicata filed by police officers who were named as defendants in a civil action. The appendix to the Petitioner's "Reply Brief to Opposition to Petition for Writ of Certiorari," pp. 1a-10a, includes the Plea of Estoppel and Res Judicata, the trial court's order sustaining the Plea, the plaintiff's Notice of Appeal and Assign-

ment of Errors and the Virginia Supreme Court's order denying the Petition to Appeal and affirming the trial court.[1]

Souders had pleaded guilty to charges made by Officer Gabrielson, but later sued the arresting officers for using excessive force during the arrest. (*Id.* at 9a and 5a). The Circuit Court of Arlington County held that Souders' plea of guilty precluded the subsequent damage action against the arresting officers. Souders then filed a petition for writ of error in the Virginia Supreme Court assigning the following as reversible errors of law: "[T]he matter was not...between the

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[1]The order of the Virginia Supreme Court provides, in pertinent part, as follows:

> "The petition of Guthrie E. Souders for a writ of error to a judgment rendered by the Circuit Court of Arlington County on the 18th day of July, 1974, in a certain motion for judgment then therein depending, wherein the said petitioner was plaintiff and Edward Gabrielson and others were defendants, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that there is no reversible error in the judgment complained of, doth reject said petition, and refuse said writ of error, the effect of which is to affirm the judgment of the said circuit court."

same parties or privies, the issue determined in the prior criminal actions is not the same issues [sic] in the instant case, nor was the issue of facts [sic] in the instance case...actually litigated...." (*Id.* at 5a-6a.) Souders also assigned as reversible error the Circuit Court's refusal to apply the "test of mutuality." (*Id.* at 6a.) The Supreme Court of Virginia dismissed the petition for a writ of error, and sustained the Circuit Court's resolution of the res judicata and estoppel issues in favor of the police officers, including Gabrielson, who were named as defendants in the civil action.

The *Souders* precedent, although unreported, is the Virginia case known to the Petitioners that comes closest to the instant case. In Virginia, the denial of a petition for writ of error (or petition for appeal) is a decision which affirms the trial court's decision. *Virginia Electric and Power Company v. Clarke*, 179 Va. 596, 19 S.E.2d 693 (1942). Respondent Prosise admitted that he was guilty of the crime for which he was convicted and the trial court judge found that the plea of guilty was "voluntarily and intelligently tendered." (J.A. 41). Respondent was represented by counsel and at no time did Respondent Prosise put the state court or the Petitioners on notice that he objected to the search warrant until he filed a civil action pursuant to 42 U.S.C. § 1983. The *Souders* precedent precludes such an action due to

this Court's recognition of the following principle: under 28 U.S.C. § 1738, state judgments are to be given the same preclusive or nonpreclusive effect by federal courts as they would be given by courts of the judgment-rendering state. See *Kremer v. Chemical Construction Corps.*, 102 S.Ct. 1883 (1982). Since the briefs filed for and on behalf of Respondent do not so much as mention the *Souders* precedent, their elaboration of Virginia's law of preclusion, however interesting, is incomplete and somewhat misleading.

Souders v. Gabrielson is consistent with Virginia's conventional position that the preclusive effects of a prior valid judgment in Virginia "rest upon considerations of public policy which...demand an end to litigation and seek to prevent the harassment of parties." *Bates v. Devers*, 214 Va. 667, 670, 202 S.E.2d 917, 920 (1974). In the case at bar, the Court of Appeals' flat rule which permits Respondent to file a civil action in the federal court after he voluntarily and intelligently declined to invoke his constitutional rights in the state court criminal proceeding delays the end of litigation and encourages the harassment of law enforcement officers.

II. THE COURT OF APPEALS DID NOT HOLD—CONTRARY TO THE ASSERTION IN RESPONDENT'S BRIEF—THAT THE LAW OF VIRGINIA IS SETTLED IN SUPPORT OF THE NOTION THAT A GUILTY PLEA HAS NO PRECLUSIVE EFFECT IN SUBSEQUENT CIVIL ACTIONS.

Respondent's Brief represents erroneously that "the Circuit Court correctly recognized, the settled law of Virginia is that, with limited exceptions not relevant here, criminal convictions...by plea...have no preclusive effect in subsequent civil actions." (Respondent's Brief, p. 14). Actually, the Court of Appeals, not having been apprised of the *Souders* precedent, held that the "Virginia decisions to which we have been directed do not yield a definitive answer" to the narrow question of preclusion presented by the instant case. *Prosise v. Haring, supra* at 1138. The Court of Appeals investigated the "broader questions" of preclusion law in Virginia, and turned to "general principles of collateral estoppel...as a guide to Virginia's likely view were the precise question presented to its highest court...." *Id.* at 1139. The Court of Appeals again admitted, "the answer is...not definitively given." *Id.* at 1139. Nevertheless, the Court of Appeals applied a flat rule of nonpreclusion, and in so doing violated the admonition of *Kremer v. Chemical Construction*

Corp., supra at 1889, namely that "Section 1738 requires federal courts to give the same preclusive effect to state court judgments that those judgments would be given in the courts of the state from which the judgments emerged."

Given *Souders v. Gabrielson,* Virginia law precludes a civil suit based on § 1983 after it is demonstrated that the plaintiff had previously pleaded guilty to the crime that gave rise to the alleged violation of his civil rights. Also very troubling is the Respondent's failure to recognize the application of the landmark case of *Eagle, Star & British Dominions Insurance Co. v. Heller,* 149 Va. 82, 140 S.E. 314 (1927), to the instant case. In that case the Virginia Supreme Court departed from the rule of mutuality and held that a convicted arsonist could not recover on the insurance policy for the burned property. The case clearly stands for the proposition that the criminal defendant will not be permitted to profit from his illegal act. See also Vestal, *Restatement (Second) of Judgments, A Modest Dissent,* 66 Cornell L. Rev. 464, 482 (1981) (very strong support exists for extension of issue preclusion in cases such as those where a person pleads guilty and later sues officers who made the arrest). Similarly, Prosise is seeking to profit monetarily from the result of his admittedly illegal conduct.

In view of the departure from the mutuality doctrine in *Eagle, Star v. Heller,* under circumstances similar to the instant case, it is fair to conclude that the Virginia Supreme Court would apply preclusive effect to Prosise's guilty plea even though it might require a departure from the alleged requirement of "actual litigation."[2]

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[2]The Respondent takes the position that *Eagle, Star v. Heller,* is not helpful to the Petitioners because it concerned an example of actual litigation of the issue sought to be precluded. It should be noted that in *Ideal Mutual Insurance Co. v. Heller,* 319 N.W.2d 289 (S.Ct. Iowa, 1982), the court held that where there is an examination of the factual basis of the plea, a guilty plea satisfies the "actual litigation" requirement of issue preclusion. Thus, a convicted murderer could not recover on an insurance policy on the victim's life because his criminal act was established by his plea of guilty and the policy had an exclusion for such instances. The court relied heavily on the decision in *Prosise, supra.* The Iowa court, however, interpreted *Prosise* as establishing the principle that "incentive to litigate" is the determinative factor in issue preclusion. The Iowa court further noted that since *Prosise* involved issues other than the elements of the crime, the Iowa court would "reserve the *Prosise* question for another day." *Ideal Mutual Insurance Co. v. Winker* at 296.

If incentive to litigate is the determinative factor in issue preclusion, then the Fourth Circuit was plainly in error in the *Prosise* case; there cannot be any serious argument that Prosise did not have adequate incentive to raise the search

(footnote continued)

If nothing else, the *Souders* and *Eagle, Star v. Heller* precedents demonstrate that Virginia courts do not invoke the flat rule of nonpreclusion, which the Court of Appeals announced as one justification for reversing the federal trial court's summary judgment in favor of Respondent. Although abstention is not necessary in the instant case, the proper course of action when a Court of Appeals is uncertain[3] about the preclusive effect of state court judgments is to abstain. Abstention, however, was not invoked by the Court of Appeals. This failure seems to have been

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(footnote continues)

issue in a motion to suppress. The real reason that the Fourth Circuit adopted a rule of nonpreclusion is because to hold otherwise would cut off Prosise's access to a federal forum. *Prosise supra* at 1142.

In any event, the reasoning of the Iowa Supreme Court supports the application of preclusion to the situation in *Prosise*. Where, as in *Prosise* the trial court examines the circumstances of the search which produced the essential evidence of the crime, the requirement of "actual litigation" is amply satisfied.

[3]The Court of Appeals clearly was uncertain. The opinion admits over and over again that the precise question of preclusion before it "has not, so far as our research discloses, been authoritatively addressed by the Virginia courts." *Prosise v. Haring, supra* at 1139.

prompted by that court's distrust of the state court system and its inclination to provide Prosise with a federal forum for his claims. The Court of Appeals erroneously believed that "the 1983 federal forum is the only one available for assertion of this particular constitutional claim." *Prosise v. Haring, supra* at 1142.

III. RESPONDENT ADOPTS THE MISTAKEN PREMISE THAT ONE MUST KNOWINGLY AND INTELLIGENTLY WAIVE HIS SPECIFIC RIGHT TO FILE AN ACTION UNDER 42 U.S.C. § 1983.

Repondent asserts, "A guilty plea standing alone does not evidence...an intentional relinquishment of a statutory right to sue state agents for damages under § 1983 for antecedent constitutional violations." (Respondent's Brief, p. 27). Contrary to Respondent's assertion, an intelligent relinquishment of a known right is all that the Supreme Court requires; it does not require the curious rule proposed by Respondent, namely that one must waive his statutory rights to each and every cause of action that provides him with a particular remedy for an alleged constitutional violation. If that were the rule, an unmistakable waiver of a constitutional right would never amount to a relinquishment of statutory causes of action that pertain to the antecedent constitutional violation.

Respondent's assertion is also misleading because the instant case involves far more than a guilty plea "standing alone." A brief examination of the sentencing hearing which followed the state court's acceptance of Prosise's guilty plea shows this. (For the Court's convenience the appendix to this brief contains a portion of the transcript of the sentencing hearing. The full transcript is contained in the Record in this Court in Volume II, "Exhibit", and is labeled Exhibit F.) An attempted murder charge was "nolle prossed as a result of plea bargaining." (Appendix to this brief at page 3a.) However, following his plea of guilty and the admission of evidence which corroborated his plea of guilty, the respondent began to assert his innocence, and the trial court treated this as a motion to withdraw the guilty plea. (Appendix to this brief at pages 1a and 6a.) The respondent's action treated as a motion was then denied because the judge heard the evidence that was acquired as a result of the allegedly illegal search warrant, and was satisfied that the evidence "would have been very persuasive to a jury." (Appendix to this brief at page 1a.) Respondent then petitioned the Virginia Supreme Court challenging the voluntariness of his plea and the refusal of the trial court to permit withdrawal of the plea. Finding no reversible error, the Petition

for Appeal was refused. *Prosise v. Commonwealth*, Record No. 78-1479 (Va. S.Ct., July 17, 1979). Since this evidence was heard and was a factor that was relevant to the disposition of the motion to withdraw a guilty plea, the adequacy of the evidence was litigated as fully as Respondent desired. Respondent claimed that the evidence was inadequate to establish his guilt, but in making his argument, he and his counsel declined to assert that the search warrant which led to the seizure of the evidence was constitutionally infirm. (Appendix to this brief at pages 5a-6a. Respondent does not argue that he was inadequately represented by counsel, or that he lacked a full and fair opportunity to challenge the evidence upon which the state court relied. Moreover, Respondent has not argued in the state court, the United States District Court, the Court of Appeals, or in this Court that his failure to file a motion to exclude or to object to the evidence was not his considered choice. In short, Respondent intelligently relinquished a known constitutional right.

A plea of guilty, particularly a guilty plea that is not permitted to be withdrawn upon the basis of evidence, justifies the summary judgment entered in favor of Petitioners in this case. As this Court reaffirmed in *Tollett v. Henderson*, 411

U.S. 258, 267 (1973): "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense for which he is charged, he may not thereafter [in a collateral proceeding] raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." *A fortiori*, when the accused seeks to withdraw his guilty plea but does not challenge the evidence which justifies his conviction, sentence and the denial of his motion to withdraw the guilty plea, there is in effect a deliberate bypass or a considered choice that constitutes an intelligent relinquishment of a known constitutional right under the principles of *Tollerr v. Henderson, supra* and the trilogy of cases that the Court relied on in *Tollett: Brady v. United States*, 397 U.S. 742 (1979); *Parker v. North Carolina*, 397 U.S. 790 (1970); and *McMann v. Richardson*, 397 U.S. 759 (1970).

Under these circumstances, the failure of the Court of Appeals to address the issue of intelligent relinquishment of a known right is unfortunate. The Court of Appeals confused this issue with the collateral estoppel issue. *Prosise v. Haring, supra* at 1136-1137. This confusion was a mistake of law, and is in conflict with the Fourth Circuit's own decision of *Cramer v. Crutchfield*, 648 F.2d 943 (4th Cir. 1981) *(per curiam)*. In-

credibly, the Court of Appeals suggests that Respondent Prosise lacked incentive to object to the search warrant in the instant case because of his desire to raise the point in federal court. Petitioners believe, with Justice Stewart, that "it is difficult to imagine a defendant risking conviction and imprisonment because he hoped to win a later civil judgment based upon an allegedly illegal search and seizure." *Allen v. McCurry, supra* at 104, n. 23. If we speculate along with the Court of Appeals and suppose Respondent made this considered choice, his deliberate bypass is an abuse of process that would justify a federal court's refusal to hear his § 1983 claim on the merits. The more likely explanation is that Respondent's failure to invoke his constitutional rights was initially motivated by his hope "to take the benefits, if any, of a plea of guilty...." *McMann v. Richardson, supra* at 768. When these benefits proved to be unsatisfactory, it was still open to Respondent to establish that his guilty plea was not a constitutionally valid waiver, and that he did not deliberately by-pass the orderly processes provided to determine the illegality of the search. Respondent, however, also relinquished this right, having failed to object to the evidence relied upon by the state court when his motion to withdraw the guilty plea was denied.

Under these circumstances, Respondent's argument that there must be a specific waiver of his right to file a § 1983 action is particularly unpersuasive.

CONCLUSION

The overriding issue of policy in this case is whether a person convicted of a serious crime by his plea of guilty who did not invoke his constitutional rights during the state court proceeding, is entitled to a decision from this Court that would allow him money damages. There is nothing unconstitutional about a common sense rule of judicial administration that prevents the confessedly guilty from manipulating the general rules provided for his protection in order to obtain money damages. One collateral consequence of the Respondent's guilty plea to manufacturing PCP should be his disqualification from utilizing 42 U.S.C. § 1983, especially after he deliberately by-passed the orderly procedures provided by state courts for protecting his constitutional rights. A rule that encourages felons seeking money damages to by-pass these procedures is not the product of an enlightened jurisprudence.

To reward convicted drug merchants who want their plea bargain and money damages too offends both common sense and the moral sense

on which the Constitution is based. There is no reason to adopt a flat rule of nonpreclusion, as the Fourth Circuit did, simply because the exclusionary rule may be considered offensive. By proposing a flat rule of nonpreclusion while the exclusionary rule continues in effect, the Respondent is proposing to use 42 U.S.C. § 1983 to upset the constitutional balance "which our Nation, built upon postulates of respect for the liberty of the individual, has struck between that liberty and the demands of organized society." *Poe v. Ulman*, 367 U.S. 497, 542 (1961) (Harlan, J., dissenting). A novel case ruling that encourages actions for windfall damages by those who break the law and abuse the process provided by the states clearly is not required by any traditional understanding of the due process of law concept. What is due is what is fitting and appropriate. Traditional and reasonable expectations of privacy are not violated by a rule of judicial administration that prevents the criminal from increasing his wealth because a policeman may have made a mistake which was not challenged by its alleged victim at a crucial stage of the events following the policeman's action. In sum, Section 1983 should not be reformulated in order to

provide a remedy for duly convicted felons inconsistent with the view that they have been duly convicted.

Respectfully submitted,

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SENTENCING HEARING TRANSCRIPT

June 15, 1978

(Begin Transcript page 12)

THE COURT: I will treat this as a motion made by the defendant pro se for the right to withdraw his plea of guilty and reinstate a plea of not guilty. The motion is denied. A great deal of time was devoted to taking the plea in this case. I remember it very distinctly. I think the Court went farther than is the custom in order to be sure the plea was voluntarily made and that the Commonwealth (Begin Transcript page 13) had a good strong case that formed the factual basis for the plea. It was quite clear if the defendant had been exposed to trial he would have been convicted by a jury. The defendant in those circumstances, fully understanding where he stood, elected to take his chances with sentencing by the Court rather than sentencing by the jury.

I see by his pre-sentence report that he contends there are weaknesses in the Commonwealth's case but I heard enough of the Commonwealth's case to satisfy myself that it would have certainly gotten by a motion to strike and in my mind it would have been very persuasive to a jury — the motion is denied.

Do you wish to call any witnesses in the defendant's behalf?

MR. RODWAY: No, Your Honor.

THE COURT: Is there anything you wish to say before sentencing?

MR. RODWAY: Your Honor, Mr. Prosise has exercised those rights that the Constitution of the United States and Virginia have given to him. I think he is pretty much on the money, Your Honor, in his analysis of the case. There are certain things which Your Honor will remember without it being pointed out in the pre-sentence report. That is while (Begin Transcript page 14) there was apparently a small amount of PCP that was manufactured, there is no real evidence that the defendant had manufactured it. There was a small amount of PCP which was found lying around the house or the apartment which was the basis of the possession of PCP; the chemicals which were there were apparently, obviously to be used in the manufacturing of PCP but apparently they had not gone through the entire process because as I remember Investigator Allen indicating that there was one chemical missing so this particular batch could never have been made.

Mr. Prosise in his discussion with the probation officer I think very candidly told her he had tried to make it before but what he turned out before had been garbage. On a scale of one to a

hundred, Your Honor, I don't know if that rings in at about seventy-five, eighty-five or ninety percent. I am not so brazen as to say that. I would ask the Court after hearing what Mr. Prosise had to say this morning and after reading the presentence report, to treat this in terms of sentencing, as an attempted manufacture of PCP.

Your Honor, the facts that are there are indicative of that. It is also, Your Honor, if you want to go across the line and it is very easy to go across the line, it is (Begin Transcript page 15) indicative of perhaps the manufacturing of PCP.

MR. RODWAY [defendant's counsel]: In terms of sentencing, Your Honor, I would ask the Court not on what he has said this morning but in terms of his lack of prior record, in terms of any criminal offenses, the only thing that he was convicted of in the past, Your Honor, was a matter in Falls Church; a matter that arose contemporaneous with this charge, an incident which involved his wife. He pled guilty downstairs to the discharging of a firearm, was given a $200.00 fine suspended.

The attempted murder charge, Your Honor, which sprang from his fight which his wife was nolle prossed as the result of plea bargaining. There is no question in this day and age the drugs

involved is a serious drug. It is a bad drug. My contact with individuals who are self-professed users of this drug would indicate that their brains are probably analogous to Swiss cheese in terms of the holes that the PCP put into their brains but once again, Your Honor, this young man stands before the Court as a first time convicted felon. He stands before the Court as an individual by his own admission feels that he has something to offer to society and I would ask the Court to treat this as if he had been found guilty of attempted manufacture of PCP rather than manufacturing of (Begin Transcript page 16) PCP. I don't know if it makes any difference but the upper end of the penalty scale is still ten years and the bottom end is a whole lot less than five years - thank you.

THE COURT: Mr. Carp?

MR. CARP [Assistant Commonwealth's Attorney]: If it please the Court, I certainly don't have to rehearse here the dangers of PCP. It is becoming more and more of a problem in this area. The reason it is becoming more and more of a problem is because of people like the defendant. We're not talking about somebody who is making a little bit for his own use but people who are manufacturing this in four pound lots. I understand the wholesale value of that amount is over $5000. We are not talking about some kids playing with a chemistry set in the backyard.

Incidentally, the question of whether or not he manufactured as I mentioned before the testimony at the previous hearing was that there was PCP in a bucket, buckets which were used for the attempt. Either he manufactured PCP or bought it someplace and smeared the inside of the bucket and the latter explanation is absurd.

With regard to his attitude, I think that is proper consideration for the Court at this time. I would like to quote from his statement, not all chemicals were mine, (Begin Transcript page 17) but half were. I had a partner that knew how to make it good. I am taking the rap because I believe in doing unto others as you would have them do unto you. His attitude at this point seems to be, at least with regard to the community, what he wants to do unto the community is to provide them with PCP. His partner is still out there, still out there with the formula and presumably is still out there manufacturing it and the defendant's attitude, he is going to stand before this Court and say I think it is right to protect that man.

I think that is best an illustration I can give to the Court why he should be sentenced to more than the minimum in this case and significantly more and I would ask the Court to do so.

THE COURT: Do you wish to say anything before sentence is imposed?

THE DEFENDANT: Yes sir, I would still like to claim my innocence, Your Honor, in the manufacturing myself of PCP. As the Commonwealth Attorney has stated, it was in my diary. That diary was written six months before I was arrested. In that diary it also stated that I wanted the chemicals to go to Houston and to have PCP made. It wasn't for me to make it. It was in there that I couldn't make (Begin Transcript page 18) first step crystals. The Commonwealth went to Maryland. They got the receipts from my apartment to prove all the chemicals I ever bought. I had never bought enough chemicals to make the first step crystals. They had enough evidence to prove I could make the finished product at one time. If they went to the receipts, they would know I never bought a chemical called pepperdene — I never had enough chemicals to manufacture the first step crystals. They could prove that themselves and I also I never had at one time — I never had enough chemicals to manufacture the second step. I still claim my innocence of manufacturing phencyclidine on or about the 7th day of September, 1977.

THE COURT: You may stand, please.

The legislature has provided a penalty range from five to forty years for this offense. To my mind the seriousness of it puts it near the upper end of that scale. The defendant is young. He has a full page of criminal record in Virginia, not very serious but his calloused attitude toward what is going to happen to the rest of society as the result of his activity. His only apparent interest is how he can assert technicalities to get him out of here. He is already talking about what appeals he is going to file. He has not shown the slightest (Begin Transcript page 19) desire to cooperate with the law enforcement authorities to assist in stamping out this evil. He is distributing a poison that in my personal experience has destroyed the lives of many young people. His only motivation for doing it was obviously to make money. He has apparently been making money at this for some time. He has not been gainfully employed for a long period of time.

The Court imposes a sentence of 25 years in the State penitentiary. The defendant is remanded to custody of the sheriff. Also a fine of $1000.00.

(Whereupon, at 11:30 a.m., the hearing was concluded.)